UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, v. NICOLE DAEDONE and RACHEL CHERWITZ, Defendants.	Case No. 23-cr-146 (DG)

DEFENDANTS' INITIAL PROPOSED JURY INSTRUCTIONS

/s/ JENNIFER BONJEAN
One of the attorneys for Nicole Daedone
Bonjean Law Group, PLLC
Ashley Cohen
Gabriella Orozco
303 Van Brunt Street, 1st Floor
Brooklyn, NY 11231
(718) 875-1850

/s/ IMRAN H. ANSARI
One of the attorneys for Rachel Cherwitz
Aidala, Bertuna & Kamins PC
546 Fifth Avenue, 6th Floor
New York, NY 10036
(212) 486-0011

VENUE

Venue refers to the location of the charged crime. The indictment alleges that the crime charged occurred in whole or in part in this judicial district, which is the Eastern District of New York. This district includes Brooklyn, Queens, Staten Island, Nassau, and Suffolk counties on Long Island, and the waters surrounding Manhattan. To establish venue for a crime in the district, the government most prove that some act in furtherance of the crime happened in the Eastern District of New York and that Defendant was either present in the venue or that the defendant had knowledge or could reasonably foresee that the act would occur in the venue.

While the Government's burden as to everything else in the case is proof beyond a reasonable doubt, a standard that I have already explained to you, venue need only be proved by a preponderance of the evidence, that is, it is more likely than not that some act in furtherance of the crimes occurred in Brooklyn, Queens, Staten Island, Nassau, and Suffolk counties on Long Island, and the waters surrounding Manhattan. I emphasize that this lesser standard only applies when considering the question of venue.

United States v. Kelly, 19-CR-286 (E.D.N.Y. Sept. 27, 2021) [Dkt. No. 303]
United States v. Raniere, 18-CR-204 (E.D.N.Y. Jun. 18, 2019) [Dkt. No. 728]
United States v. Shavkat-Abdullaev, 761 Fed. Appx. 78, 84 (2d Cir. 2019)

INDICTMENT

The defendant is formally charged in an indictment. As I instructed you at the outset of this case, an indictment is a charge or accusation. An indictment is not evidence of anything, and you should not give any weight to the fact that the defendants have been indicted in making your decision in this case. The indictment in this case contains one count and charges the Defendants with Conspiracy to Commit Forced Labor. To convict a defendant of forced labor conspiracy, you must unanimously agree that the government has proven beyond a reasonable doubt each and every element of the offense. Any verdict you return on this count must also be unanimous.

KNOWLEDGE AND INTENT

A person acts knowingly if she acts voluntarily and intentionally, not because of mistake accident or other innocent reason. A person acts intentionally if she acts with the specific intent to do something the law forbids.

These issues of knowledge and intent require you to make a determination about the defendant's state of mind, something that can rarely be proven directly. A wise and careful consideration of all the circumstances before you, however, may permit you to make a determination as to the defendant's state of mind. Indeed, in your everyday affairs, you are frequently called upon to determine a person's state of mind from her words and actions in given circumstances. You are asked to do the same here.

United States v. Kelly, 19-CR-286 (E.D.N.Y. Sept. 27, 2021) [Dkt. No. 303]
United States v. Raniere, 18-CR-204 (E.D.N.Y. Jun. 18, 2019) [Dkt. No. 728]

CONSPIRACY GENERALLY

The Defendants are charged with conspiring to commit forced labor in violation of Section 1594(b) and 1589(a) and (b) of Title 18 of the United States Code. A conspiracy is a kind of criminal partnership, an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed. The essence of the charge of conspiracy is an understanding or agreement between or among two or more persons that they will act together to accomplish a common objective that they know is unlawful.

In order for each Defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, beginning in 2006 and ending in May 2018, the Defendant and at least one other person made an agreement to commit the crime of forced labor; and

Second, the Defendant knowingly and intentionally became a member of the conspiracy knowingly with the intent to accomplish the unlawful purpose.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit forced labor as an object of the conspiracy with all of you agreeing unanimously that the conspirators agreed to commit the offense of forced labor, and only forced labor.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some objective or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one

who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a coconspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor by merely knowing that the conspiracy exists.

You must decide whether the conspiracy charged in the indictment existed, and, if it did, who at least some of its members were. If you find that the conspiracy charged did not exist, then you must return a not guilty verdict, even though you may find that some other conspiracy existed. Similarly, if you find that any defendant was not a member of the charged conspiracy, you must find that defendant not guilty, even though that defendant may have been a member of some other conspiracy.

Adapted from: *United States v. Kartan, et al.,* 16-CR-217 (E.D. Cal. March 14, 2019) [Dkt No. 178]; *United States v. Percoco,* No. 16-CR-776 (VEC), Dkt. 516 at 21-23 (S.D.N.Y. Feb. 28, 2018); *United States v. Ashburn,* 11-CR-303 (NGG) (E.D.N.Y. Mar. 11, 2015) [Dkt No. 425]

FORCED LABOR – ELEMENTS

In order to determine whether Defendants committed the offense of forced labor conspiracy, you must understand the offense of forced labor, Although the government need not prove that Defendants actually committed forced labor, the government must prove beyond a reasonable doubt that each Defendant conspired with one other person to commit forced labor.

The relevant statute for the underlying crime of forced labor provides, in pertinent part:

Whoever knowingly . . . obtains the labor or services of a person –

(1) by threats of serious harm to, or physical restraint against, that person or another person;

(2) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) by means of the abuse or threatened abuse of law or the legal process.

To prove forced labor, the government must prove beyond a reasonable that:

First: The defendant obtained the labor or services of one or more persons; and

Second: The defendant did so through: (a) threats of serious harm, or physical restraint against that person or persons; or (b) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or (c) by means of the abuse or threatened abuse of law or the legal process; and

Third: The Defendant acted knowingly.

18 U.S.C. § 1589 (2006).

In connection with the first element: The word "obtain" means to acquire, to procure or to succeed in gaining the possession of something as a result of some plan, endeavor or general course.

The word "labor" means work or performance of any particular task or set of tasks, and it includes any form of physical or mental effort or exertion to perform such work or tasks.

The word "services" means any conduct, work or duty performed for the benefit of another person or thing.

In connection with the second element: The term "physical restraint" means confinement by force and against the will of the alleged victim.

A threat is a serious statement expressing an intention to inflict harm, at once or in the future, as distinguished from idle or careless talk, exaggeration, or something said in a joking manner. For a statement to be a threat, the statement must have been made under such circumstances that a reasonable person who heard or read the statement would understand it as a serious expression of an intent to cause harm. In addition, the defendant must have made the statement intention it to be a threat, or with the knowledge that the statement would be viewed as a threat.

The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial or reputational harm, that is, sufficiently serious, under all surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor or services in order to avoid incurring that harm.

In determining whether a particular type or certain degree of threatened harm was sufficient to obtain each individual's labor or services, you should consider the individual's

circumstances, including each individual's age, intelligence, education, experience, background, social isolation, social status, and any reasonable means of escape or terminating the relationship. The defendant must intend that the person believe that serious harm would befall one who refused to work.

Also, in consideration of whether the Defendants issued threats of serious harm to any individual, you should consider that in an organization whose participants hold certain beliefs and who act in accordance with those beliefs, such participants are permitted to stop associating with other participants of that organization who do not act in accordance with such beliefs and are permitted to warn of their intention to do so.

The words "scheme," "plan," and "pattern" are to be given their ordinary meanings. A "scheme" is a plan or program of action, especially a crafty or secret one. A "plan" is a method for achieving an end or a detailed formulation of a program of action. A "pattern is a form or model proposed for imitation or a discernible coherent system based on the intended interrelationships of component parts.

The term "abuse or threatened abuse of law or legal process," means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

In terms of the third element that the government must prove beyond a reasonable doubt that the defendant acted knowingly. You have already been instructed on the definition of knowingly and should use that definition here.

A few final words about the offense of forced labor.

To prove forced labor, the government does not need to prove physical restraint – such as the use of chains, barbed wire or locked doors – in order to establish the offense of forced labor. The fact that a person may had had an opportunity to escape is irrelevant if a defendant placed her in such fear or circumstances that she did not reasonably believe she was free to leave. A person who has been placed in such fear or circumstances is under no affirmative duty to try to escape. On the other hand, if the person felt free to leave his or her circumstances, the second element of forced labor as described above cannot be satisfied.

In considering whether services performed by someone was involuntary you are instructed that it is not a defense to the crime of forced labor that the person may have initially agreed, voluntarily, to render the service or perform the work. If a person willingly begins work, but later desires to withdraw, and is then forced to remain and perform work against her will by force, threats of serious harm, or abuse of law, or by scheme, plan or pattern, intended to cause her believe that non-performance will result in serious harm to her or another person then her service becomes involuntary.

United States v. Kartan, et al., 16-CR-217 (E.D. Cal. March 14, 2019) [Dkt No. 178]
United States v. Marcus, 05-CR-457 (E.D.N.Y. Dec. 21, 2007) [Dkt. No. 202]
United States v. Calimlin, 538 F. 3d 706, 711 (7th Cir. 2008)

Additional Authority*:* Headley v. Church of Scientology, 687 F.3d 1173, 1180 (9th Cir. 2012) (A church warning that they will not associate with members who do not act in accordance with their doctrine does not support a forced labor allegation. Such warnings are protected by the Free Exercise Clause of the First Amendment); See also, e.g., Local 8027, AFT-N.H., AFL-CIO v. Edelblut, 651 F. Supp.3d 444, 460 (D. N.H. 2023) (“Because their extracurricular speech is plausibly entitled to First Amendment protection, a rigorous vagueness review is required.”). When a court assesses whether beliefs, expressions, or associations are "religious" within the meaning of the First Amendment, the court must take a broad view of "religion." "Religion" doesn't solely include major world religions or even a deistic belief. Sherr v. Northport-East Northport Union Free School Dist., 672 F. Supp. 81, 92 (E.D.N.Y. 1987) (“The Supreme Court, for example, has held that a religion need not necessarily be founded upon

a belief in the fundamental premise of a 'God' as commonly understood in Western theology, *Torcaso v. Watkins,* 367 U.S. 488, (1961), and has written that 'the test of belief 'in a relation to a Supreme Being' is whether a given belief that is sincere and meaningful occupies a place in the life of its possessor parallel to that filled by the orthodox belief in God.' United States v. Seeger, 380 U.S. 163, 165-66 (1965)."); see also International Soc. For Krishna Consciousness, Inc. v. Barber, 650 F.2d 430 (2d Cir. 1981).

IMPROPER CONSIDERATIONS

Your verdict must be based solely upon the evidence developed at trial, or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the government sustained its burden of proof, any personal feelings you may have about the defendants' race, religion, spiritual beliefs, sexual orientation, sexual history, ethnic background, sex, or age. All persons are entitled to the presumption of innocence and the government has the same burden of proof.

It would be equally improper for you to allow any feelings you might have about the nature of the crimes charged to interfere with your decision-making process. To repeat, your verdict must be based exclusively upon the evidence or the lack of evidence in the case. Despite any reactions you may have based on the conduct described during the witnesses' testimony and the nature of any images you may view, it is imperative that your reactions to the testimony and any images do not interfere with your ability to be a fair and impartial juror.

The question of possible punishment of the defendant is of no concern to the jury and should not, in any sense, enter into or influence your deliberations. The duty of imposing

sentence rests exclusively on the court. Your function is to weigh the evidence in the case to determine, solely upon the basis of the evidence, whether or not the defendants are guilty beyond a reasonable doubt of the crime charged.

United States v. Kelly, 19-CR-286 (E.D.N.Y. Sept. 27, 2021) [Dkt. No. 303 at 4, 6]
United States v. Marcus, 05 CR 4577 (ARR) (E.D.N.Y. Feb. 21, 2007) [Dkt. No. 202]

EVIDENCE OF OTHER BAD ACTS

You have heard evidence that the Defendants may have engaged in conduct, other than the crime charged in the indictment. The Defendant is not on trial for committing any acts not charged in the indictment. Consequently, you may not consider evidence of those other acts as a substitute for proof that the Defendant committed the crimes charged. Nor may you consider evidence of these other acts as proof that the Defendants has a criminal propensity, that is, that they likely committed the crime charged in the indictment because they were predisposed to criminal conduct.

As I have charged you during the trial, the evidence of uncharged conduct by the Defendant is admitted for limited purposes, and you may consider it only for those limited purposes. The purposes for which such evidence is admitted are as follows […]

United States v. Raniere, 18-CR-204 (E.D.N.Y. Jun. 18, 2019) [Dkt. No. 728]
United States v. Kelly, 19-CR-286 (E.D.N.Y. Sept. 27, 2021) [Dkt. No. 303 at 9]

LOST OR DESTROYED EVIDENCE

If you find that the government intentionally destroyed or failed to preserve [evidence] that the government knew or should have known would be evidence in this case, you may infer, but are not required to infer, that this evidence was unfavorable to the government.

Model Jury Instruction 4.19 for the United States Court of Appeals for the Ninth Circuit

GOVERNMENT AS A PARTY

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether government or individuals, stand as equals at the bar of justice.

Authority: Adapted from *United States v. Anibal Soto*, 12 Cr. 556 (RPP).

CRIME DEFINED BY STATUE

In our system, we only have crimes that are defined by statute. The fact that something may seem morally wrong to you may not be considered by you in deciding whether any crime has been committed. Statutes define our crimes, and from time to time, I will talk to you about the individual statutes and how they break down into elements so you can consider the elements the government must prove. Some vague feeling that something wrong has been done is insufficient to convict anyone of any charge whatsoever. You must break it down to the elements and see if there is proof beyond a reasonable doubt as to each one of those elements. Only then, with that determination made, can you render a verdict.

Authority: Adapted from the charge in *United States v. Scherer*, 92 Cr. 698 (KTD)